

The complaint

Mr W, who is represented by a professional representative (“PR”) complains that Santander UK Plc rejected his claim under section 75 Consumer Credit Act 1975 (“s.75”).

What happened

In August 2019 Mr W paid €29,900 to a firm, which I will call F for timeshare relinquishment services. He made two payments totalling €6,000 from his Santander credit cards and the balance was by bank transfer. Mr W had a number of exchanges with F about his claim and the work it was undertaking on his behalf, but he says he has not had a response since May 2021.

PR submitted a s.75 claim on Mr W’s behalf to Santander. It argued that Mr W had been misled by F. It said that F had done little to justify the fee it had charged Mr W who had been pressurised into making the payment. It said that F had made a false statement of fact and in reaching that conclusion it said it was necessary to take a holistic approach rather than simply rely on the written documents. It said Santander should take into account oral representations, but did not specify what these were. It also said that F had not diligently pursued Mr W’s claim and it had breached the contract.

Santander rejected the claim on the basis there was no evidence of misrepresentation and F had offered no assurance about the success of the claim. PR brought a complaint to this service and this was raised with Santander which then was able to issue a final response letter rejecting the complaint.

The complaint was considered by one of our investigators who didn’t recommend it be upheld. She thought there was no evidence of misrepresentation or a breach of contract. PR didn’t agree and said F had failed to provide a breakdown of fees or clarity on what was happening or what was planned. This lack of transparency indicated the claim had not been pursued and this amounted to breach of contract.

What I’ve decided – and why

I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

When the evidence is incomplete, inconclusive or contradictory as some of it is here – I’ve reached my outcome on the balance of probabilities – that is, what I consider likely to have happened given the available evidence and the wider circumstances.

I want to acknowledge that I’ve summarised the events of the complaint. I don’t intend any discourtesy by this – it just reflects the informal nature of our service. I also want to assure Mr W and PR that I’ve reviewed everything on file. If I don’t comment on something, it’s not because I haven’t considered it. It’s because I’ve concentrated on what I think are the key issues. Our powers allow me to do this.

I should make it clear that the role of the Financial Ombudsman Service is to resolve

individual complaints and to award redress where appropriate. I do not perform the role of the industry regulator and I do not have the power to make rules for financial businesses or to punish them.

I do not consider I can uphold this complaint. I will explain why.

This complaint has been submitted as a claim under s. 75. This legislation offers protection to customers who use certain types of credit to make purchases of goods or services. Under s. 75 the consumer has an equal right to claim against the provider of the credit or the retailer providing the goods or services, if there has been a misrepresentation or breach of contract on the supplier's part. For s. 75 to apply, the law effectively says that there has to be a

- Debtor-creditor-supplier agreement and
- A clear breach of contract or misrepresentation by the supplier in the chain.

Our role isn't to say if there has been a breach of contract or a misrepresentation for a valid claim under s. 75 but to consider if Santander has come to a fair outcome based on the evidence provided. I am satisfied the required agreement is in place and so I must consider if there has been a breach of contract or misrepresentation.

Misrepresentation is when a false statement of fact has been made, and this false statement induces the customer. Both points need to be satisfied for me to say a misrepresentation has been made.

Mr W entered into a contract which includes the following

"FIRST. THE CLIENTS are owners of timeshare week(s), or holiday club package(s), obtained from the company: Silverpoint and would like to initiate a legal procedure through the court in order to cancel or declare the invalidity of their rights and contracts or claiming back amounts in case declining the nullity of the contract/s should not be viable.

For this reason, THE CLIENTS have ordered [F] to manage all the necessary steps on their behalf, including contracting lawyers and prosecutors, or providing them directly from the already contracted professionals, to declare the contract mentioned above cancelled or invalid.

SECOND For this service, THE CLIENTS acknowledge and agree to pay [F] ... the total sums, excluding legal fees, obtained either from the court as possible outcome of their sentence or from the Resort/Opponent or from any other third party by way of any out of court settlement agreed at any time after the date of signing this contract, as a settlement or compensation. They also specifically authorize their lawyer/ barrister to retain / pay over directly the agreed amount to [F] from the amounts awarded either way."

It goes on to state:

"In similar disputes our recommend legal team have found infringements of several articles of the Spanish Timeshare Act and infringements of general Civil Law, Consumer Protection Acts as well as the existence of misleading advertisement. They have also achieved numerous favourable rulings from the Supreme Court, setting doctrine in Spain in various timeshare matters.

But as in every legal dispute and per ethics of the professionals we need to inform you that no guarantee can be given as to the outcome of any legal action."

So F agreed to manage all the necessary steps in order for Mr W to be able to end his agreement with his timeshare provider. The correspondence I have seen indicates that this is what F was doing. The timeshare provider has gone into liquidation and F was seeking to recover some money on behalf of Mr W. PR says that Mr W has not heard from F since May 2021, but that does not mean that what it was offering was misrepresented.

I have not heard what Mr W was told beyond that contained in the contract. It may well have put a positive gloss on what could be achieved, but that does not mean that there was any misrepresentation.

PR seems to recognise that the documentation does not fully support Mr W's claim since it asks that a holistic approach be taken. However, I can't say that Santander was wrong to take the approach it did. It has not seen clear evidence that there has been either misrepresentation or a breach of contract.

Having reviewed the evidence I cannot say that F has breached the contract. The legal process has been initiated and is ongoing as agreed. F offered no guarantees and the fact Mr W has not received any money back does not mean there has been a breach of contract. While Mr W may not have been updated for a while F is not obliged to do so. I can understand his frustration, but I have not seen enough to allow me to say that Santander should have accepted his claim.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 4 December 2025.

Ivor Graham
Ombudsman